?IN THE HIGH COURT OF JUDICATURE AT MADRAS
%DATED: 07/09/2006
*CORAM
THE HON'BLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HON'BLE Ms.JUSTICE K.SUGUNA
+W.P. No.43975 of 2002
#K.Soundarapandian
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
$State of Tamil Nadu
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
!FOR PETITIONER : M.Ravi
^FOR RESPONDENT : Titus Jesudoss
:ORDER

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-09-2006

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE Ms. JUSTICE K. SUGUNA

W.P. Nos. 43975/2002, 26131/2004 & 29445/2003
&
W.P.M.P. Nos.64521/02, 35946/03 & 31752/04 & W.V.M.P. No.2307/03

W.P. No. 43975/2002

Mr.K.Soundarapandian ..Petitioner

Vs.

1. The State of Tamil Nadu, rep. by
Secretary to Government,
Environment and Forest Department,
Fort St. George, Chennai 600 009.

2. The Principal Chief Conservator
of Forests, Chennai 600 015.

3. Mr.C.P.M. Manickam

4. Mr.J. Ramalingam

5. Mr.K. Selvaraj

6. Mr.J.T. Noelraj

7. Mr.D. Sampath

8. Mr.M. Muthiah

9. Mr.P. Annamalai

10. Mr.B. Bojan

11. The Tamil Nadu Administrative
Tribunal,
Chennai 104,
rep. by its Registrar ..Respondents

Prayer:

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the 11th respondent/Tribunal in O.A. No. 4385/1998 and that of the 1st respondent in G.O.Ms.No.566, Environment and Forest Department, dated 10.6.1997, quash the common order dated 3.9.2002 in O.A. No. 4385/98 and batch cases and G.O.ms.No.566, Environment and Forest Department, dated 10.6.1997 and issue consequential directions to the 1st and 2nd respondents to fix the seniority of respondents 3 to 10 in the category of Assistant Conservator of Forests, only with reference to the date of their acquiring proper qualifications and eligibility in accordance with the Special Rules and to place all of them below the name of the petitioner herein, in the seniority list of Assistant Conservator of Forests, in the Tamil Nadu Forest Service.

For Petitioner :: Mr.M. Ravi

For Respondents :: Mr.Titus Jesudoss
Spl.G.P. (Forest) for R1 & R2

Mr.R. Thiagarajan, SC for
M/s . Sudha Ravi Associates for
R5, R7 and R9

No appearance for R10 and R11

R3, R4, R6 & R8 not ready

W.P. No. 29445 of 2003

1.The Secretary to Government,
Environment and Forest Departments
Fort St. George, Chennai 600 009.

2.The Principal Chief Conservator of
Forests, Panagal Buildings,

Saidapet, Chennai 600 015. ..Petitioners

Vs.

K. Selvaraj ..Respondent

Prayer:

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records in O.A. No. 7217 of 2001 dated 3.9.2002 on the file of the Tamil Nadu Administrative Tribunal, Chennai and quash the same.

For Petitioners :: Mr.Titus Jesudoss,
Spl.G.P.(Forest)

For Respondent :: Mr.R. Thiagarajan, SC for
M/s. Sudha Ravi Associates

W.P. No. 26131 of 2004

M.Kalifulla ..Petitioner

Vs.

1.K. Selvaraj

2.The Government of Tamil Nadu,
rep. by the Secretary to Government,
Environment and Forest Department,
Fort St. George, Secretariat,
Chennai 600 009.

3.The Principal Chief Conservator of Forests,
Chennai 600 015.

4.The Tamil Nadu Administrative Tribunal,
Chennai 600 104
rep. by its Registrar ..Respondents

Prayer:

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records in O.A. No. 7217/2001 dated 3.9.2002 on the file of Tamil Nadu Administrative Tribunal, Chennai and quash the same.

For Petitioner :: Mr.M. Ravi

For Respondents :: Mr.R. Thiagarajan, SC for
M/s. Sudha Ravi Associates for R1

Mr.Titus Jesudoss, Spl.G.P.(Forest)
for R2& R3

O R D E R

K. SUGUNA,J.

W.P. No. 43975 of 2002 has been filed challenging the order passed by the Tamil Nadu Administrative Tribunal in O.A.No. 4385/1998 dated 3.9.2002. W.P. Nos. 26131 of 2004 and 29445 of 2003 are also against the common order passed by the Tribunal dated 3.9.2002 allowing O.A. No.7217/2001. The parties shall be referred to in the rank as they are arrayed in W.P. No. 26131/2004.

2. The facts leading to the case are:
The petitioner in W.P. No. 26131/2004 was appointed as a Forest Ranger in the year 1977 in the Forest Department, Government of Tamil Nadu. Subsequently, he was promoted as an Assistant Conservator of Forest with effect from 25.4.97. In the year 1990, the Government wound up Cinchona Department and issued G.O.Ms. No.221, Environment and Forests (CIN) Department dated 3.5.90, by which all the assets and liabilities of the Cinchona Department were to be transferred to Tamil Nadu Tea Plantation Corporation Limited (TANTEA in short) and the entire staff of the Cinchona Department were to be taken over on deputation by TANTEA. Basing on this, the 1st respondent along with other Cinchona Staff was sent to TANTEA. In the year 1993, the Tamil Nadu Cinchona Department Staff Association filed O.A. No.4487/93 on the file of the Tamil Nadu Administrative Tribunal for directions to repatriate the members of the said Association,who were sent on deputation to TANTEA, to the Parent Department, namely, the Forest Department. The said application was allowed by order dated 18.9.1995 and the Tribunal issued directions to take back all the erstwhile Cinchona Department staff to the Forest Department and to give them appropriate posting. Thereupon, the Government , by G.O.Ms. No. 275, Environment and Forest Department dated 6.11.96, issued orders for absorption of erstwhile Cinchona Department staff in appropriate categories and scales of pay. As far as the 1st respondent is concerned, he was absorbed as Assistant Conservator of Forest. Subsequent to this, a representation dated 14.8.2000 was given with a request to fix his seniority in the cadre of Assistant Conservator of Forest. The official respondents herein passed an order dated 10.9.2001 to the effect that fixation of inter-se seniority will be considered after the disposal of O.A. Nos. 4385/1998 and 503/2000, which were then pending before the Tamil Nadu Administrative Tribunal. Challenging the same, O.A. No. 7217/2001 was filed and it was disposed of by a common order dated 3.9.2002 along with O.A. Nos.2116/96, 5179/97, 4385/98, 503/2000. The Tribunal, in its order dated 3.9.2002 held that since the erstwhile Cinchona Department employees have been integrated and absorbed in the Forest Department, their inter-se seniority has to be fixed with effect from 1.4.90, in other words, for reckoning the seniority in the cadre of Assistant Conservator of Forest, their service has to be taken into account with effect from 1.4.1990 and they shall be placed just below the other Assistant Conservators of Forests, who have been promoted on or before 1.4.1990. Challenging this, the petitioner has filed the above writ petition.

3. According to the learned counsel for the petitioner, the order of the Tribunal, so far as it relates to directing the official respondents to count the seniority of erstwhile Cinchona Department staff with effect from 1.4.90, for fixing the inter-se seniority in the cadre of Assistant Conservator of Forest, is contrary to the rules and prima facie, illegal. That apart, according to the learned counsel, as far as the 1st respondent is concerned, he was originally appointed in the Cinchona Department and subsequently, on winding up of the said Department, he was sent to TANTEA. Basing on the orders of the Tribunal, he was repatriated to the Forest Department by G.O.Ms.No. 275 dated 6.11.96. As

per this Government Order only, he was absorbed in the cadre of Assistant Conservator of Forest. According to the learned counsel, he was appointed in the post of Assistant Conservator of Forest by order dated 10.6.97 in G.O.Rt. No. 566 Environment and Forests (FR.I) Department. As such, his joining in the post of Assistant Conservator of Forest is subsequent to the petitioner herein. That apart, as far as the Forest Department is concerned, specifically, for the post of Assistant Conservator of Forest, as per rule 8(b) of the Special Rules for Tamil Nadu Forest Service, seniority shall be determined only from the date on which the Assistant Conservators of Forest, whether recruited directly or by transfer, begin to draw, for the first time, the time scale of pay sanctioned for the post. (Further, as per the Special Rules, only after the completion of training alone, one is eligible for seniority). As far as the 1st respondent is concerned, he has drawn the pay fixed for the post of Assistant Conservator of Forest only in July, 1997 whereas the petitioner was appointed as an Assistant Conservator of Forest with effect from 25.4.1997 and he has drawn the pay fixed for the post on 1.5.1997. As such,according to the learned counsel for the petitioner, as per the rules, the 1st respondent cannot be senior to him.

4. The next contention of the learned counsel for the petitioner is the establishment list of the Assistant Conservators of Forest has been issued in the year 1998 as well as in 2000 wherein the contesting respondent was shown as junior to the petitioner herein and this has not been objected by him. That apart, though he was absorbed by order passed in the year 1996 as Assistant Conservator of Forest, only in the year 2000, he has given representation for fixation of seniority with effect from 1.4.90. But, as per Rule 35(f) of Tamil Nadu State and Subordinate Services Rules, any grievance with regard to seniority has to be raised within a period of three years. As such, according to the learned counsel, the representation made by the contesting respondent is a belated one. Learned counsel for the petitioner further submitted that as per G.O.Ms. Nos.125 & 126, Environment and Forest Department dated 24.8.2001, the services of of the erstwhile Cinchona staff were regularised on deputation on the dates noted against each of the staff, as mentioned in the annexure to the said orders. As far as the 1st respondent is concerned, upto the date noted in the annexure, his service has been regularised only in TANTEA. As such, counting their service for the purpose of seniority, prior to this, in Forest Department is unsustainable. That apart, already, a similar question was raised before the Tribunal by those in the cadre of Forester/Forest Ranger and the same was dismissed and against such dismissal, W.P. Nos. 22900/2001, 22901/200, 23070/2001 and 23737/2001 were filed before this Court and a Division Bench of this Court, by order dated 4.4.2003 confirmed the order of the Tribunal.

5. On the other hand, learned senior counsel appearing for the 1st respondent submitted that since the 1st respondent was absorbed in the Forest Department with effect from 1.4.90, for reckoning his seniority in the cadre of Assistant Conservator of Forest, his service has to be counted with effect from 1.4.90 and not with effect from 1996. Apart from this, according to the learned senior counsel, the 1st respondent was absorbed as Assistant Conservator of Forests, no objection was raised by the petitioner herein, as such, now he cannot raise any objection with regard to the seniority of the 1st respondent. Further, according to the learned senior counsel, since the objection has been raised by the petitioner, after a lapse of nearly 7 years, the relief sought for should not be granted. Besides, according to the learned senior counsel, the judgment of the Division Bench will not apply to the facts of this case, since, the relief sought for therein was regarding promotion to the post of Ranger and not relating to seniority of erstwhile Cinchona Department staff. That apart, according to the learned senior counsel, as early as 1990 itself, orders have been passed absorbing the staff of Cinchona Department in Forest Department and with effect from 1.4.90, the parent Department for erstwhile Cinchona staff is the Forest Department. Therefore, the 1st respondent is entitled to count his service for seniority purpose with effect from 1.4.90. That apart, according to the learned senior counsel, only on deputation terms, he was sent to TANTEA and by virtue of G.O.Ms.No. 221 dated 3.4.90 and G.O.Ms.No. 275 dated 6.11.96, the Government issued orders absorbing the entire staff

of erstwhile Cinchona Department in Forest Department and placing them as Forest Department staff with effect from 1.4.90. Taking into account, this position, the staff of erstwhile Cinchona Department cannot be denied the benefit of service put in by them from 1.4.90. Besides, according to the learned senior counsel, having decided not to terminate the service of erstwhile Cinchona Department staff and utilised them in the Forest Department, they cannot be denied their service, rights and promotional chance. According to the learned senior counsel, having been absorbed in the Forest Department with effect from 1.4.90 and sent on deputation to TANTEA, their service rights remains in the Forest Department from 1.4.90 and had not gone away. As such, the contesting respondent is entitled to count his service with effect from 1.4.90 in the cadre of Assistant Conservator of Forest. The learned senior counsel relied on the judgment reported in AIR 1987 SC 2291 (K. MADHAVAN V. UNION OF INDIA) wherein the Hon'ble Supreme Court has held that "while calculating the qualifying service in the cadre of Deputy Superintendent of Police, the service spent on deputation in CBI also has to be taken into account, otherwise, no officer would be available to join CBI on deputation." On the basis of this judgment, the learned senior counsel contended that service spent by the contesting respondent on deputation in TANTEA should also be taken into account and his seniority in the cadre of Assistant Conservator of Forest has to be fixed taking into account his service from 1.4.90. Besides, the petitioner has filed W.P. No. 26131/2004 in his individual capacity, as such, he cannot take a stand that in the event of counting the service of contesting respondent with effect from 1.4.90 for fixing his seniority in the cadre of Assistant Conservator of Forest, all those who are promoted subsequent to 1.4.90, will get affected. Besides, according to the learned senior counsel, in view of the order passed in the year 1990 in G.O.Ms. No. 221, Government issued G.O.Ms. No. 275 dated 6.11.96 absorbing the 1st respondent as Assistant Conservator of Forest. As such, the same has to be relate back to 1.4.90 and not with effect from the date of joining. According to the learned counsel, ignoring the service on deputation while determining seniority is contrary to the judgment of the Hon'ble Supreme Court, cited supra. Learned senior counsel, relying on Rule 35(b) of the General Rules further contended that in a case of transfer, service rendered in equal category has to be taken into account for calculating seniority in that cadre. As such, the learned senior counsel prayed for dismissal of the writ petition.

6. As against the common order, official respondents have filed W.P. No. 29445/2003. Learned Government Advocate appearing for the petitioners in that writ petition, adopting the arguments of the learned counsel for the petitioner in W.P. No. 26131/2004 contended that out of sympathy, the erstwhile Cinchona Department staff were absorbed in the Forest Department. For appointment as Assistant Conservator of Forest, as per Rule 15 of the Tamil Nadu Forest Service Rules, the following qualification is prescribed:

"1. A candidate for appointment by direct recruitment as Assistant Conservator of Forests.

(a) Must have completed or will complete the age of twenty one year and must not have completed or will complete the age of thirty years on the first day of July of the year in which the selection by appointment is made;provided that in the case of candidate belonging to Scheduled Castes, Schedules Tribes, Most Backward Class, Denotified communities and Backward Classes, the upper age limit shall be thirty five years (with effect from 23.01.1995)

(b) Must hold Bachelors Degree in "Forestry", Botany, Zoology, Physics, Chemistry, Mathematics, Statistics, Zoology, Agricultural Engineering(Mechanical, Civil or Chemical) of any University or Institution recognized by the University Grants commission for purposes of the grant, provided that in the case of Post Graduates with Mathematics or Statistics, they must have taken one of the following subjects in their PUC examination namely.

(i) Biology (ii) Physics and (iii) Chemistry.

2. No person shall be eligible for appointment by recruitment by transfer as Assistant Conservator of Forests unless he has passed the Account test for Executive Officers and Departmental test in Forest Revenue and has completed 8 years of service as Ranger.

3. No Ranger appointed on or before the 1st January, 1968 shall be eligible for appointment by recruitment by transfer as Assistant Conservator of Forests he has worked in the special units namely

(i) Plantation Works (such as Crash Plantation Division, Soil Conservation in Reserved Forests Afforestation, Tamil Nadu Forest Plantation Corporation and other Plantations) :: Two years

(ii) Project or Corporation such as Tea Rubber :: Two years.

(iii) Non-sensitive and Territorial posts such as
Working Plan, Research Wings, Survey
Timber and Sandal Depots. :: Three years

If recruited directly, shall commence probation with effect from the date on which the reports for trainee in any of the State Forest Service Colleges and be on probation for a total period of three years and six months within a continuous period of four years and six months.
If recruited by transfer for a total period of two years on duty within a continuous period of three years.

A candidate recruited as Assistant Conservator of Forests by direct recruitment, shall in the first instance, undergo a preliminary practical training in a Forest Division for two months and then undergo the course of study in the Indian Forest College, Dehradun or State Forest Collect-cum-Research Centre, Burnihat or SFRC, Coimbatore for a period of two years. On obtaining the certificate of satisfactory completion of the course of study in the Indian Forest College, Dehradun or State Forest Service College-cum-Research Centre, Burnihat or State Forest Service College, Coimbatore, he shall be given training for a period of twenty months as indicated below:-

(i) Practical and Office training under the Divisional
Forest Officer :: 3 months

(ii) Training in the Office of the Conservator of
Forests :: 1 month

(iii) Practical Training in Police, Revenue and
Judicial Departments (Three weeks each in
Police and Revenue Departments and two
weeks in Judicial Departments) :: 2 months

(iv) Range Training (Independent Charge) :: 6 months

(v) General attachments to a division or to
special work without independent charge
memo :: 8 months"

According to the learned Government Advocate, the contesting respondent did not possess the above said qualification for appointment as Assistant Conservator of Forest. Inspite of it, basing on the scale of pay, he was absorbed as Assistant Conservator of Forest in the Forest Department.

According to the learned counsel, in fact, a number of Forest Rangers, who have completed more than 20 to 25 years of service are waiting to be promoted as Assistant Conservator of Forest for a long number of years. Apart from this, according to the learned counsel, the relief granted by the Tribunal in respect of the contesting respondent is contrary to the judgment of the Division Bench in W.P. No. 22900/2001 batch. According to the learned counsel, by taking a sympathetic view and considering the last drawn pay in the Corporation, he was absorbed in the Forest Department by giving him full pay protection, in spite of the fact that he did not possess the qualification for appointment as Assistant Conservator of Forest. As such, the request of the contesting respondent to count his seniority with effect from 1.4.90 in the cadre of Assistant Conservator of Forest is totally unjustifiable and untenable. Besides, according to the learned counsel, instead of retrenching the erstwhile Cinchona Department staff, they were absorbed as Assistant Conservator of Forest on sympathetic ground. As such, for seniority purpose in the cadre of Assistant Conservator of Forest, their service cannot be counted with effect from 1.4.90. Hence, he prays for allowing the writ petition.

7. We have considered the above said submissions of the learned counsel on either side.

8. As far as the post of Assistant Conservator of Forest is concerned, it comes under the category 2 of the Special Rules for Tamil Forest Service. As per the above said rule, vacancies for the said post can be filled up either by direct recruitment or recruitment by transfer from the Rangers of Tamil Nadu Forest Service. As per the above said Rule, a candidate for appointment by direct recruitment as Assistant Conservator of Forest must possess the following qualification:

"1. A candidate for appointment by direct recruitment as Assistant Conservator of Forests.

(a) Must have completed or will complete the age of twenty one year and must not have completed or will complete the age of thirty years on the first dayof July of the year in which the selection by appointment is made;provided that in the case of candidate belonging to Scheduled Castes, Schedules Tribes, Most Backward Class, Denotified communities and Backward Classes, the upper age limit shall be thirty five years (with effect from 23.01.1995)

(b) Must hold Bachelors Degree in "Forestry", Botany, Zoology, Physics, Chemistry, Mathematics, Statistics, Zoology, Agricultural Engineering(Mechanical, Civil or Chemical) of any University or Institution recognized by the University Grants commission for purposes of the grant, provided that in the case of Post Graduates with Mathematics or Statistics, they must have taken one of the following subjects in their PUC examination namely.

(i) Biology (ii) Physics and (iii) Chemistry."

As per the said above said Rule, no person shall be eligible for appointment by recruitment by transfer as Assistant Conservator of Forests unless he has passed the Account test for Executive Officers and Departmental test in Forest Revenue and has completed 8 years of service as Ranger. Apart from this, as a Ranger, one should have served in different units to be eligible for appointment as Assistant Conservator of Forest:

Sl.No.	Name of the Units	Minimum period to be worked
1.	PLANTATION WORKS	

(Such as Crash plantation division, Soil Conservation in Reserve Forests, Afforestation, TAFCORN after 1.9.92 and other plantations) Two years

2. CORPORATIONS
Project or Corporation such as TEA Rubber and TAFCORN - Prior to 1.9.92 Two years

3. NON SENSITIVE & TERRITORIAL POSTS
Such as Working Plan, Research Wings, Survey, Timber and Sandal Depots and Forest Protection prior to 1.9.92 Three years

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As far as the petitioner in W.P. No. 26131/2004 is concerned, originally, he was recruited as a Forest Apprentice and thereafter, appointed as a Forest Ranger in the year 1977. Subsequently, he was promoted as an Assistant Conservator of Forest with effect from 25.4.97. As far as the 1st respondent is concerned, he was originally appointed in the Cinchona Department. In the year 1990, on the abolition of the said Department, the Government issued G.O.Ms. No. 221 dated 3.4.90 absorbing erstwhile Cinchona Department staff and as per the said Government Order, they were also deputed to TANTEA and subsequently, by G.O.Ms. No. 126 dated 24.8.2001, the period of service of erstwhile Cinchona staff as listed in the annexure to that order in TANTEA from 1.4.90 and upto the dates noted against each in the Annexure was regulated on deputation. That is, to say in other words, the service of the 1st respondent was regularised on deputation in TANTEA with effect from 1.4.90 and he was on deputation upto 24.7.97. As far as the staff of erstwhile Cinchona Department are concerned, upto the date noted against each in the Annexure to G.O.Ms. No.126 Environment and Forest Department dated 24.8.2001, their service was regularised in TANTEA. That apart, by G.O.Ms. No. 275 dated 6.11.96, along with the erstwhile Cinchona Department staff, the 1st respondent was also absorbed as Assistant Conservator of Forest. Consequence of this, he was appointed as Assistant Conservator of Forest with effect from 10.6.97. As per the rule applicable to the said post, the seniority of a candidate, who is appointed as an Assistant Conservator of Forest by way of recruitment by transfer, has to be counted from the date on which he has drawn the basic scale of pay applicable to the post of Assistant Conservator of Forest. Since, the1st respondent was appointed as Assistant Conservator of Forest with effect from 10.6.97, he could not have drawn the pay of the post of Assistant Conservator of Forest prior to this date. Hence, counting of his service with effect from 1.4.90 is contrary to rule 8(b) of the Special Rules applicable Tamil Nadu Forest Service. That apart, as rightly contended by the learned standing counsel for the Forest Department, on the abolition of the Cinchona Department, on sympathetic ground, the staff of the said Department were absorbed in the Forest Department, but sent on deputation to TANTEA. Basing on this alone, by G.O.Ms. No. 126 dated 24.8.2001, his service was regularised as on deputation, that too,only with effect from 1.4.90. That apart, only by G.O.Ms. No.566 dated 10.6.97, for the first time, the 1st respondent was posted as Assistant Conservator of Forest in consequence of his absorption as Assistant Conservator of Forest by G.O.Ms. No. 275 dated 6.11.96. Prior to this, the 1st respondent was not holding the post of Assistant Conservator of Forest. As such, the question of drawing the basic scale of pay of the post of Assistant Conservator of Forest prior to 10.6.97 would not arise at all.

9. As far as the judgment reported in AIR 1987 SC 2291 (cited supra) is concerned, the same will not apply to the facts of this case. The petitioner therein was appointed as DSP and sent on deputation

to CBI. As such, the Hon'ble Supreme Court, while calculating the qualifying service in the cadre of DSP for appointment to the post of SP, as held that the service spent on deputation to CBI has to be taken into account. As far as the case on hand is concerned, for the first time, the 1st respondent was appointed as Assistant Conservator of Forest only with effect from 10.6.97. As such, his service, prior to 10.6.97, which he has on deputation, cannot be taken into account for calculating the seniority in the cadre of Assistant Conservator of Forest. That apart, as rightly contended by the learned counsel for the petitioner, the civil list of Assistant Conservators of Forest was issued in the year 1998 and 2000 itself wherein also, the 1st respondent herein and the erstwhile Cinchona Department staff, who were absorbed as Assistant Conservators of Forest were shown junior to the petitioner herein. But, no objection was raised for the same. Even as per the rules applicable namely, the Tamil Nadu State Subordinate Service Rules, under Rule 35 of the said Rules, any grievance with regard to seniority has to be raised within a period of three years. That apart, as rightly contended by the learned Standing Counsel for the official respondents that though the 1st respondent did not possess any of the qualification prescribed under the Rules for appointment to the post of Assistant Conservator of Forest, either by direct recruitment or by recruitment by transfer, only on sympathetic ground, he was absorbed as Assistant Conservator of Forest. Without even possessing the qualification for the said post, the 1st respondent cannot claim that the service which he had rendered in TANTEA has to be taken into account for seniority purpose in the cadre of Assistant Conservator of Forest. As far as the petitioner is concerned, based on the qualification and the number of years of qualifying service, he was promoted as Assistant Conservator of Forest. Now, if the contention of the 1st respondent is accepted, then it will amount to placing an unqualified person above a qualified person, which is not only unsustainable, but it will also amount to giving preferential treatment to those who are unqualified over qualified persons. That part, as far as the petitioner is concerned, he was promoted as an Assistant Conservator of Forest with effect from 25.4.97 whereas the 1st respondent was appointed as an Assistant Conservator of Forest with effect from 10.6.97. As such, even as per the General Rules also, for a post, if recruitment is more than by one source, then the date of joining is material. Looking from this angle also, since the petitioner was appointed to the post of Assistant Conservator of Forest, earlier than the 1st respondent, certainly, he cannot be placed above the petitioner herein in the seniority list.

10. That apart, the relief sought for by the contesting 1st respondent in the O.A. is to count his service with effect from 1.4.90 in the cadre of Assistant Conservator of Forest. This O.A. has been filed in the year 2001. With effect from 1.4.90, a number of departmental staff from the feeder category were promoted as Assistant Conservator of Forest basing on their qualification as well as seniority. Now, the 1st respondent and other similarly placed persons, who do not even possess the qualification prescribed and who are erstwhile Cinchona Department staff absorbed on sympathetic ground, cannot be placed above the persons, who are holding the post with effect from 1.4.90. If this has to be accepted, it will amount to giving a go -by to the rule of seniority. Apart from this, if the relief sought for by the erstwhile Cinchona Department staff to count their seniority with effect from 1.4.90 is granted, then it will amount to unsettling the settled things, since, for the past 10 years, a number of Rangers have been promoted as Assistant Conservators of Forest. Besides, when the O.A. has been filed claiming seniority with retrospective effect, the same has been filed without even impleading the persons, who are likely to get affected by the relief of retrospective seniority. As such, on the ground of non-joinder of parties, for which the learned counsel for the petitioner relied on the judgments reported in 1996 (2) SCC 19 (RAJBIR SINGH V. STATE OF HARYANA) and 2004 (2) SCC 76 (RAMRAO AND OTHERS V. ALL INDIA BACKWARD CLASS BANK EMPLOYEES WELFARE ASSOCIATION AND OTHERS), they are not entitled for the relief sought for in the O.A. Apart from this, as rightly contended by the learned counsel for the petitioner and also, it is crystal clear from G.O.Ms. No. 275 dated 6.11.96 that their absorption to the post of Assistant Conservator of Forest is only taking into account the pay drawn by them in the TANTEA Department and not with reference to either the post or the scale of pay which they were drawing in Cinchona Department.

Apart from this, it is specifically stated in the affidavit filed by the official respondents that the duties and responsibilities, which the 1st respondent has discharged while on deputation to TANTEA Department is totally different from the duties and responsibilities which one has to execute in the post of Assistant Conservator of Forest. Since, the nature of work as an Assistant Conservator of Forest is in a totally different situation and also it requires facing of risk and other things, training in various fields before promotion to the post of Assistant Conservator of Forest is stated to be mandatory. But, ignoring the service rules and ignoring the qualification required for the post, only basing on the pay drawn by him in the TANTEA Department wherein he had worked on deputation, he has been given appointment in the post of Assistant Conservator of Forest. As such, granting seniority prior to the date on which he was appointed as an Assistant Conservator of Forest will result in total violation of the rules apart from making a mockery of the whole purport and intent of the Rules.

11. In respect of the erstwhile Cinchona Department staff, O.A. No. 146/98 has been filed by one Jayapal to appoint him as an Assistant Conservator of Forest with effect from 1.4.90. But the same was dismissed. As against the same, the said Jayapal filed a writ petition in W.P. No. 22900/2001 before this Court and the same was disposed of by the Division Bench of this Court by order dated 4.4.2003 wherein the Division Bench has specifically held that, when the post in question carries still more responsibilities and onerous duties to be performed, the conditions mentioned in the relevant rules cannot be lightly dealt with or ignored in order to hold that the petitioners should be deemed to have worked as Forester, when, as a matter of fact, they did not really work as a Forester in the Forest Department as stipulated in the relevant clause. Besides, a strict application of the said rule is really called for, having regard to the nature of duties and responsibilities to be performed in a particular post. Totally ignoring the same, and giving seniority to the petitioners will make a mockery of the whole purport and intent of the Rules. That apart, as rightly contended by the learned counsel for the petitioner, what is challenged before the Tribunal is only the proceedings of the Principal Chief Conservator of Forest by which the 1st respondent was informed that after the disposal of O.A. No.4385/98 etc., the seniority of Assistant Conservators of Forest, who are absorbed from the erstwhile Cinchona Department will be decided and not the final order with regard to seniority.

12. With regard to the contention of the learned senior counsel relying on Rule 35(b), ie., in a case of transfer, the service rendered in equal category has to be taken into account for calculating the seniority in that cadre, as far as the 1st respondent is concerned, it is a case of absorption. As such, Rule 35(b) does not have any relevance at all. Besides, on absorption, on the abolition of the Cinchona Department, Forest Department was only fixed as parent department, but for all purposes, the erstwhile Cinchona Department staff were taken over by TANTEA on deputation. They were not absorbed in any post till 1996. Apart from this, paragraph 8 of G.O.Ms. No. 221 dated 3.4.90,states as follows:

"8. After careful consideration of all the factors, the Government now order as follows:

(i) The Department of Cinchona will be wound up with immediate effect. The residuary activities of the Department will be taken over by the Forest Department including pension liability Cinchona Department staff.

(ii) …

(iii)….

(iv) Tamilnadu Tea Plantation Corporation will also take over the entire Government staff of

Cinchona Department on deputation. The Forest Department will be the parent department for these staff with effect from 1.4.90 with the winding up of the Cinchona Department. The terms and conditions of deputation will issue separately....."

It is clearly established as per the above said Government Order also, that there is no regular absorption to any post in the Forest Service in 1990. Apart from this, while allowing the O.A., the Tamil Nadu Administrative tribunal has observed that 255 additional posts were sanctioned and only in those additional posts alone, the erstwhile Cinchona Department staff were accommodated. But the fact remains otherwise i.e, as per G.O.Ms. No. 128, Environment and Forests (FR.2) Department dated 4.8.2005, no additional posts have been sanctioned to accommodate the erstwhile Cinchona Department staff. Hence, the reason basing on which the Tribunal has passed an order is totally on a misconception of fact . Even on absorption, one cannot claim seniority either prior to the date on which he was holding the post or prior to the category allotted, which has been prescribed in the Rules.

13. For all the reasons stated above, W.P. Nos. 26131/2004, 43975/2002 and 29445/2003 are allowed. No costs.

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To

1. Secretary to Government,
Environment and Forest Department,
Fort St. George, Chennai 600 009.

2. The Principal Chief Conservator
of Forests, Chennai 600 015.

[PRV/7857]

Titus Jesudoss